

II. REMARKS/ARGUMENTS

35 USC 103(a) Rejections

Claims 1-10 were rejected under 35 USC 102(a) as being unpatentable over Petrick, U.S. Patent No. 6,535,129 (hereinafter, either “Petrick” or the “129 Patent”).

For the edification of the Examiner a brief discussion about the invention follows. One aspect of the invention relates using RFID tagged merchandise in a retail setting to manage inventory in that retail environment. When a tagged item is sold, its identifier is automatically removed from inventory so that the amount of merchandise in inventory can be maintained without human intervention. A further aspect of the invention is to provide customers with retail charge accounts each having a charge account card bearing an RFID tag containing customer-specific information. When the customer checks out the point of sale system reads the merchandise RFID tag, the customer RFID tag and queries the customer for a PIN or other identity confirming information and then queries the customer for the desired method of payment. Once the transaction is complete, the system updates the customer’s purchase record. Such a method of retail merchandising may be accomplished without the need for a dedicated store clerk since the transaction is driven by the customer-identifying RFID tag and the merchandise-identifying RFID tags. Other enhancements to the point of sale methodology include personalized greetings at the check out based upon the information contained on the customer’s RFID tag and the customer’s past purchases.

In another embodiment of the invention, retail merchandise is provided with RFID tags capable of being written to by the equipment at the check out counter or kiosk. Upon checkout, the inventory record is not only updated with the identity of the merchandise read from the attached RFID tag but the change of the status of the merchandise from “unsold” inventory to “sold” inventory is written to the tag. In this embodiment of the invention, all RFID tags on merchandise leaving the retail establishment may be queried to ensure that only “sold” merchandise is leaving the store. In the event that an “unsold” piece of merchandise is sensed either entering or leaving the store, an alarm condition is created and may be used to generate a perceivable alert

signal. Such a methodology would be helpful in identifying potential shoplifters without hiring additional store detectives.

Next, addressing the Petrick reference, U.S. Patent No. 6,535,129 upon which the Examiner relied solely to declare that the instant invention was unpatentable, the Applicant offers the following summary. Petrick is concerned with establishing a chain of custody of single, unique item, typically a test specimen of some sort. According to Petrick, the identity and perhaps specimen specific data is contained either on the specimen itself, on a form associated with specimen or in an external database and associated with a specific specimen by a unique identification code. Petrick is not concerned with maintaining an inventory of a class of specimens, merchandising a class of specimens or flagging a specimen as being sold or unsold. Of concern to Petrick is providing a means for tracking a specific specimen and being able to determine the history of custody of that specimen during its entire life. In contrast, the instant invention is concerned primarily with maintaining an inventory of the number of items of merchandise of a particular type and being able to flag those items as being sold or unsold.

Addressing the Examiner's comments in seriatim:

In connection with claim 1, claim 1 has been amended to describe the invention as being related to merchandise being sold in a retail environment. Petrick does not relate to merchandise being sold in a retail environment nor suggest that its chain of custody invention would serve any purpose in that environment. Claim 1 has also been amended to more accurately claim that the identifier associated with the merchandise to which it is attached is "type" specific rather than "unique" since the invention is interested in tracking the number of items of merchandise within a type and not the individual items. Like items would most likely be indistinguishable from one another, i.e., they would be fungible. This is not the case in Petrick where each specimen is unique and cannot be considered fungible with any other specimen. Claim 1 has also been amended to include the limitations previously found in claim 7 relating to the ability to write to the RFID tag affixed to the merchandise item a "status code" as an indication of whether the item was "sold" or "unsold" and to re-write the status code upon the sale of the merchandise. No such provision is found or suggested by Petrick. In view of these remarks and the

amendments to claim 1, the claim is not obvious in view of Petrick and is believed to be in proper form for allowance.

Claim 2 has been canceled, its limitation having been incorporated into independent claim 1. The Examiner has stated, without citation to any portion of the disclosure, that Petrick “discloses the method of claim 1 wherein the point of distribution is a retail store”. This is incorrect. The Examiner is invited to demonstrate to the Applicant where in the disclosure she finds support for this conclusion. The retail environment for merchandise is unique and non-obvious over Petrick as the specimens being tracked by Petrick are not for sale to customers.

With respect to claim 3, the Examiner has stated that Petrick discloses the method of the present invention that provides a customer with an account, provides a customer with a charge card having customer specific information, scan the customer’s merchandise selections at a check-out point, scans the customer’s card to obtain account information, queries the customer for a PIN to confirm the customer’s identity, provides the customer with PAYMENT options and then maintains a record of the customer-specific purchases. The Examiner has cited to Petrick col. 2, line 10 through col. 3, line 55 in support of this conclusion. However a review of that passage of Petrick reveals no such revelation and the Applicant is puzzled by the reference. Once again, Applicant would ask that the Examiner be more specific about how she reached her conclusions regarding this claim in view of the cited reference.

Since claim 3 depends from claim 1, which Applicant submits is in current condition for allowance, it is also in proper form for allowance.

Regarding claim 4, the Examiner states that Petrick discloses “a method for selling articles in a retail store”. Once again, this is simply incorrect. Petrick make no such disclosure or suggestion. Applicant has attempted to correlate the Examiner’s citations to the Petrick reference with the Applicant’s claim elements, but without success. Claim 4 is non-obvious in view of Petrick and is in proper form for allowance.

As a point of clarification, on a number of occasions, specifically in paragraphs 6, 9, 13 and 16 of the Office Action of March 10, the Examiner has stated that is was obvious to one of ordinary skill in the art “that anything that can be affixed can be removed”. It is unclear why the Examiner found it necessary to point this out as the

identifier located within the RFID tags which are affixed to the merchandise offered for sale is NOT removed from the merchandise by disclosed invention. Rather, the sold item is removed from the store's inventory. On the contrary, it is necessary to keep the RFID tag affixed to the item of merchandise in order for the invention to work according to the claim.

Regarding claims 5 and 6, which claims depend from claim 4, the Examiner states that "Petrick discloses the method of claim 4 wherein the customer-specific message is a personalized greeting; and wherein the customer-specific message is an advertisement corresponding to the customer's past purchasing preferences." Again, Petrick neither discloses nor suggests any such method. There are no retail store customers disclosed in Petrick, let alone retail customers having past purchasing preferences that drives a customer-specific message and/or advertising to be displayed at a check-out kiosk. Applicant is, once again, at a loss to determine how the Examiner reached the conclusion she did given the cited reference. Applicant submits that claims 5 and 6, stemming from allowable claim 4, are likewise nonobvious in view of the Petrick reference and are in proper form for allowance.

Claim 7 has been canceled and its elements substantially incorporated into independent claim 1.

In view of claim elements of claim 7 having been incorporated into independent claim 1, claims 8 and 9 have been amended to now depend from claim 1. Inasmuch as claim 1 is in proper form for allowance, claims 8 and 9, which depend therefrom, are likewise in proper form for allowance. However, addressing the Examiner's specific rejection, she states that, among other things, Petrick discloses the scanning of an RFID tag at the point of entry or exit to a store and then generating an alert signal if the item of merchandise is either still listed in store inventory or otherwise is tagged as being "unsold". Petrick makes no such disclosure nor suggests anything like it. Petrick does not concern a retail store, does not involve the sale of merchandise, does not identify an item as being unpaid for at the door of the store and nor generate an alert in the event an identified item is determined to be unpaid for at the door. Once again, it is unclear how the Examiner's reference to col. 2, line 10 through col. 3, line 55 has any relevance to these unique combinations of elements.

With respect to claim 10, it has been amended to relate to merchandise for sale in a retail environment. For much the same reasons as stated previously in connection with claims 8 and 9, Petrick does not disclose maintaining a record of identifiers corresponding to unsold merchandise no longer in a store's inventory. On the contrary, Petrick discloses maintaining a history of the custody and changes made to a specific specimen. The specimen disclosed in Petrick is never sold in a retail environment and flagged as such. Furthermore, Petrick does not disclose nor suggest generating an alert signal in the event that the specimen leaves a retail store without being paid for. For these reasons, among others, the invention claimed in claim 10 is clearly patentable over Petrick and is in proper form for allowance.

It is noted that the Examiner has cited as pertinent, but not relied upon U.S. Publication Nos. 2004/0238627, 2004/0195321, 2003/0227392, 2003/0028451, 2003/0158796 and U.S. Patent No. 6,901,304. Apparently, the Examiner has determined that these references considered along or in combination neither render the Applicant's invention anticipated nor obvious.

CONCLUSION

As shown in the foregoing remarks Applicant has demonstrated that claims 1-6 and 8-10, as amended, are patentable over the prior art relied upon by the Examiner. It is submitted that the remaining claims in the application are in proper form for allowance and favorable action by the Examiner is requested. The Examiner is requested to contact Applicant's representative at the telephone number below if any issues remain.

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Eley Law Firm Co.
7870 Olentangy River Rd
Suite 311
Columbus, OH 43235-1319
patents@eleylaw.com
614-825-3539 phone
614-825-9590 fax

Respectfully submitted,

/James R. Eley/

James R. Eley
Reg. No. 36,790